IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15205 of 2004

Between:

1 Kodali Rajendra Prasad, s/o Sreemannarayana,
Age:45 Yrs., Male, Hindu, Cultivating, r/o Kovvali, Denduluru

Mandal, West Godavari District.
2 Motaparthi Surya Venkata Satyanarayana, s/o

Ramachandra Rao, age:45 Yrs., Male, Hindu, Cultivation,
r/o Kovvali, Denduluru Mandal,
West Godavari District.

..... PETITIONER(S)

AND

1 The Andhra Pradesh State Wakf Board, rep., by its Chief

Executive Officer, Hyderabad.
2 The Inspector Auditor Wakf, West Godavari District at Eluru.
3 Sri Gutha Bala Gangadhar Tilak, s/o Ramachandra Rao,
Age:38 Yrs., Hindu, Male, Cultivation,

r/o Kovvali Village, Denduluru Mandal, W.G.District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents 1 and 2 in conducting auction of the leasehold rights of the property in our occupation on lease in an extent of Ac.6.50 1/2 cents each in Sy.No.350 and 351 of Kovvali Village, Danduluru Mandal, West Godavari District on 11-08-2004 at 11.00 A.M. and declaring the 3rd respondent as highest bidder and dispossessing us from the said land without passing any order of eviction in the middle of the paddy crop raised by us is existing in the land at great expense as illegal, arbitrary, unjust unwarranted violative of principles of natural justice and also Article 21 of the Constitution of India and

consequently to direct the respondents to restore the land to our possession.

Counsel for the Petitioners: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondents 1 and 2: MR.S.M.SUBHAN

Counsel for Respondent No.3: None appeared

The Court at the stage of admission made the following Order:

Petitioners claim to be the lessees in respect of the land situated in survey Nos.350 and 351 of Kovvali Village, Denduluru Mandal, West Godavari District, which is admittedly a Wakf property. It is stated that they have been cultivating the said land by paying necessary maktha regularly. It is further stated that they have raised paddy crop this year and there is standing crop in the said land. Now the grievance of the petitioners is that respondents 1 and 2, without any notice to the petitioners and without taking any steps for recovery of possession by following due process of law, conducted auction in respect of the lease-hold rights of the land in question on 11-08-2004 in which the third respondent has been declared as highest bidder. It is also stated that in pursuance thereof, the petitioners have been dispossessed. Hence, this writ petition seeking a declaration that the action of the respondents 1 and 2 is arbitrary and illegal.

Learned Counsel for the petitioners vehemently contended that the entire action of respondents 1 and 2 in dispossessing the petitioners, without following due process of law, is arbitrary and illegal. Learned Counsel further contends that even assuming that the petitioners are encroachers, they cannot be dispossessed without following the procedure provided under Section 54 of the Wakf Act, 1995 (for short 'the Act').

On the other hand, Sri S.M.Subhan, the learned Standing Counsel for respondents 1 and 2, contends that the claim of the petitioners that they are the lessees is incorrect and that the respondents 1 and 2 have rightly put the lease-hold rights of the land in question to auction. He submits that a notice of public auction was published on 3-8-2004 and the auction was conducted on 11-08-2004, in which the third respondent has been declared as highest bidder and possession has already been delivered to the third respondent. He further contended that, at any rate, this is not a matter for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India since an efficacious alternative remedy is available under Section 83 of the Act.

Having heard the learned Counsel for the petitioners and the Standing Counsel for respondents 1 and 2 and on perusal of the material on record, I am of the view that the petitioners cannot maintain this writ petition without exhausting the alternative remedy available under the Statute. As held by a Division Bench of this Court in *M.Bikshapathi V Government of Andhra Pradesh*, the Tribunal constituted under Section 83 of the Act is competent to determine not only question whether the property in question is Wakf property or not, but also to determine whether the said property has been rightly leased or wrongly leased and all the questions related to the Wakf property. In the circumstances, if the petitioners are aggrieved, it is open to them to seek redressal before the Wakf Tribunal constituted under Section 83 of the Act.

Accordingly, without expressing any opinion on the merits of the case, the writ petition is disposed of granting leave and liberty to the petitioners to avail the remedy, as available under the statute. No costs.

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30-08-2004

Note:- Issue CC in three days.

(B/O)

kdl

To

1 The Chief Executive Officer, Andhra Pradesh Stage Wakf Board, Hyderabad.
2 The Inspector Auditor Wakf, West Godavari District at Eluru.
3 Two C.D. Copies.